

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs March 9, 2007

**GLOBE LIFE AND ACCIDENT INSURANCE COMPANY v. MARIE  
NICHOLSON AND PAM OLIVER**

**Appeal from the Chancery Court for Cheatham County  
No. 11705     George C. Sexton, Judge**

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**No. M2004-01428-COA-R3-CV - Filed on April 5, 2007**

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This appeal involves a determination of whether a now-deceased insured substantially complied with requirements for a change of beneficiary on his life insurance policy from his former wife to his daughter. Because the evidence does not preponderate against the trial court's ruling that the decedent had substantially complied, we affirm the judgment of the trial court awarding the proceeds of the policy to the daughter.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court  
Affirmed**

PATRICIA J. COTTRELL, J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., P.J., M.S., and FRANK G. CLEMENT, JR., J., joined.

Kenneth K. Crites, Centerville, Tennessee, for the appellant, Marie Nicholson.

Jerry W. Hamlin, Ashland City, Tennessee, for the appellee, Pam Oliver.

**OPINION**

**I. BACKGROUND**

In April of 2000, Globe Life and Accident Insurance Company ("Globe") issued a \$10,000 term life insurance policy to James Nicholson. The beneficiary of the policy was shown as Marie Nicholson, then the wife of Mr. Nicholson. The Nicholsons were divorced on June 4, 2002, having been separated since 2001. Mr. Nicholson died January 1, 2003.

At the time of Mr. Nicholson's death, Globe's records reflected that Marie Nicholson was the beneficiary of the policy. Ms. Nicholson filed a claim with Globe for the policy proceeds.

Shortly thereafter, Globe received letters from the lawyer for Pam Oliver, Mr. Nicholson's daughter, stating that Mr. Nicholson had executed a change of beneficiary form that Ms. Oliver had mailed to Globe prior to his death. The form allegedly named Ms. Oliver as the new beneficiary. Another letter from a different lawyer for Pam Oliver was received claiming Ms. Oliver was the true beneficiary of the policy.

Because of the competing claims to the policy proceeds, Globe filed an interpleader action pursuant to Tenn. R. Civ. P. 22 asking to deposit the money with the court. Both Marie Nicholson and Pam Oliver responded, each asserting she was the true beneficiary. Ms. Oliver counter claimed against Globe and alleged that Mr. Nicholson had executed a change of beneficiary form designating Pam Oliver as his primary beneficiary on or about January 9, 2002. She also alleged that the form included a change of address and that Mr. Nicholson had received several notices at the new address after the form was sent. Ms. Oliver alleged that any error regarding the beneficiary designation and change thereof was due to Globe's negligence.

Globe responded that no change of beneficiary form was received in its office prior to Mr. Nicholson's death or prior to the February 2003 letter from Ms. Oliver's lawyer which, according to the affidavit of a Globe manager, included "what appears to be a copy of Globe Life beneficiary request dated January 9, 2002 signed by James Nicholson, and was purportedly mailed to Globe on January 9, 2003<sup>1</sup> [sic] by Pam Oliver." The affidavit also stated that Globe had not changed the beneficiary prior to Mr. Nicholson's death because it had not received the change of beneficiary form until the copy was sent by Ms. Oliver's attorney.

Both Globe and Ms. Nicholson filed motions for summary judgment. Ms. Oliver opposed the motions and submitted an affidavit stating that in late December 2001 or early January 2002, having separated from his wife and moved close to Ms. Oliver, Mr. Nicholson obtained a change of beneficiary form from Globe, which he completed and executed in the presence of Ms. Oliver and Kathy Spicer, another daughter. Ms. Oliver testified in the affidavit that she mailed the completed form.

The trial court granted summary judgment to Globe on both its complaint and Ms. Oliver's counter claims, allowed Globe to pay the insurance proceeds into the court, and dismissed Globe. The court denied Ms. Nicholson's motion for summary judgment because there was a dispute of material fact. The court stated that the issue to be determined "is whether or not the decedent, James Nicholson, during his lifetime, materially complied with the rules and regulations of Globe Life and Accident Insurance Company with regard to change of beneficiary."

After a trial, the court issued a final order denying Ms. Nicholson's claim and awarding the policy's proceeds to Ms. Oliver. The court specifically found:

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<sup>1</sup> It is obvious from the context that the 2003 date was a mistake and should have been 2002.

[T]he deceased, James Nicholson, substantially complied with the requirements of Globe Life and Accident Insurance Company for the purpose of changing the beneficiary of the policy from the claimant, Marie Nicholson to the claimant, Pam Oliver.

Ms. Nicholson appealed.

## II. ANALYSIS

The policy provides that Globe will pay the proceeds of the policy to “the Beneficiaries based on the designation in force at death.” The policy also provides that the insured may change the beneficiary at any time, and

To change a Beneficiary, file a satisfactory written request with us. Once we record it, the change will take effect. But the change will not affect any payment we made or action we took before the change was recorded.

In this appeal, the parties agree that Tennessee has long recognized the substantial compliance test for change of beneficiaries in life insurance policies. *Cronbach v. Aetna Life Ins. Co.*, 284 S.W.2d 72, 73 (Tenn. 1926); *Sun Life Assurance Co. of Canada v. Hicks*, 844 S.W.2d 652, 654 (Tenn. Ct. App. 1992). Essentially, Tennessee courts will “give effect to the intention of insured by holding that the change of beneficiary has been accomplished where he has done all that he could to comply with the provisions of the policy.” *Cronbach*, 284 S.W. at 73.

Whether an insured has done “all that he could” to change a beneficiary in compliance with policy requirements is necessarily a fact-specific inquiry. *Hicks, supra*, 844 S.W.2d at 654 (noting that because decisions on this issue are fact specific they have reached different results, and citing and discussing several such decisions).

In several cases, the courts have determined there was substantial compliance where the insured executed a change of beneficiary form, but for various reasons the change was not recorded by the insurance company before the insured’s death. *See Life and Casualty Ins. Co. v. Cornish*, 315 S.W.2d 6 (Tenn. Ct. App. 1958) (insurance agent received completed form but failed to deliver it to home office); *Holmes v. Interstate Life and Accident Ins. Co.*, 197 S.W.2d 551 (Tenn. Ct. App. 1946) (insured executed change form but was waiting for duplicate copy of policy when he died); *Barnes v. Prudential Ins. Co.*, 186 S.W.2d 918 (Tenn. Ct. App. 1944) (insured completed form but failed to attach a certificate or rider). In *Hicks*, however, the insured did not complete a change of beneficiary form, but instead merely listed his intended new beneficiary on an employee benefits survey form distributed by his employer. Because the insured had not even attempted to complete a change of beneficiary card, as he had done a few years earlier, the court concluded he had not taken all reasonable steps possible to meet the insurer’s requirements. *Hicks*, 844 S.W.2d at 654. Consequently, no substantial compliance was found. *Id.*, 844 S.W.2d at 655.

The critical question in this case, then, is whether Mr. Nicholson took reasonable steps to comply with the change of beneficiary requirements set out in the policy. That is a question of fact whose answer in large part depends on whether Mr. Nicholson executed and caused to be mailed the change of beneficiary form. The trial court found that Mr. Nicholson had substantially complied with the policy's requirements for change of beneficiary. The only way the court could have reached that conclusion, under the facts of this case and the issues raised, was to find that Mr. Nicholson had executed the required form and had taken reasonable steps to have it delivered.<sup>2</sup>

We review the trial court's findings of fact *de novo* with a presumption of correctness unless the evidence preponderates otherwise. Tenn. R. App. P. 13(d). *See Hawks v. City of Westmoreland*, 960 S.W.2d 10, 15 (Tenn. 1997). The record in this case does not include a transcript of testimony. Instead there is a Statement of the Evidence prepared by Ms. Nicholson.<sup>3</sup> The record also contains several exhibits introduced at trial including a copy of the change of beneficiary form signed by Mr. Nicholson designating Pam Oliver as the beneficiary. At the top of the form is the date 12/24/01, a date printed by the company rather than filled in by Mr. Nicholson. Mr. Nicholson's signature is dated 1/9/02. The form also includes a change of address section which had been filled in to change Mr. Nicholson's address to Ms. Oliver's house. Other exhibits are communications from Globe during 2002, primarily premium notices sent to Ms. Oliver's address and reflecting Ms. Oliver as the policy owner, and checks for premiums paid in 2002 which were drawn on Ms. Oliver's account and signed by her.

The Statement of the Evidence contains little information about the actual testimony at trial. It states, in pertinent part, that the trial court's ruling was based upon "Defendant Oliver's testimony that James Nicholson had completed the change of beneficiary form in the presence of Kathy Spicer and Pam Oliver. That the form was properly completed and that Defendant Oliver mailed the form with the U.S. post office with sufficient postage to ensure delivery."

Ms. Nicholson argues on appeal that there was no documentary evidence introduced at trial to substantiate the testimony of Ms. Oliver. In essence, her argument is that the evidence was insufficient to support the trial court's finding. The question in this appeal, however, is whether the evidence in the record preponderates against that finding. Having reviewed the record in its entirety, we conclude the evidence does not preponderate against the trial court's finding.

There is no challenge to the authenticity of Mr. Nicholson's signature. Mr. Nicholson and his daughter Ms. Oliver received communications from Globe after the change of beneficiary form was sent in at the address noted on it, giving them no reason to believe the change of beneficiary had

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<sup>2</sup>Ms. Nicholson states in her brief that the trial court found that Mr. Nicholson had requested the change of beneficiary form and had executed it and that Ms. Oliver had mailed it. The sparse record before us does not include such specific findings.

<sup>3</sup>The statement on its face does not indicate approval by the trial court. However, pursuant to Tenn. R. App. P. 24(f), such approval is deemed to have been made.

not also been made. Ms. Oliver paid the premiums during the next year. The change of beneficiary form was, on its face, sent by Globe to Mr. Nicholson presumably at his request.

Based on the record before us, we affirm the trial court's ruling that Mr. Nicholson substantially complied with Globe's requirements for change of beneficiary. Accordingly, the award of the insurance proceeds to Pam Oliver is affirmed. Costs of this appeal are taxed to the appellant, Marie Nicholson.

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PATRICIA J. COTTRELL, JUDGE